IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6685 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgement?-Yes. : YES

2. To be referred to the Reporter or not?-No. :

3. Whether Their Lordships wish to see the fair copy of the judgement?-No. : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-No. : NO

5. Whether it is to be circulated to the Civil Judge?-No. :

PREMJIBHAI ARJANBHAI PIPALIA

Versus

CHIEF CONTROLLING REVENUE AUTHORITY

Appearance:

MR SANDEEP N BHATT for Petitioner

MR HM BHAGAT for Respondent No. 1, 2

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 27/04/2000

ORAL JUDGEMENT

Rule. Mr.H.M. Bhagat appears and waives service of rule on behalf of the respondents. In the facts and circumstances of the case, the matter is taken up for final hearing today.

This petition is filed against the order passed

by the Chief Controlling Revenue Authority under Section 32B of the Bombay Stamp Act, 1958. It appears that notice was issued under Section 32A of the Act read with Rule 4(2) of the Bombay Stamp (Determination of Market Value of Property) Rules, 1984 (hereinafter referred to as "the Rules"), calling upon the petitioner as to why the determination said to have been mentioned in the sale deed should not be enhanced and asking the petitioner to pay additional amount of stamp duty. It appears that the petitioner did not appear before the authorities presumably because he was not staying at the address, which was mentioned in the sale deed, but might have changed the residence and accordingly, orders were passed by the authority against the petitioner in his absence.

Being aggrieved by the order passed by the authority, the petitioner approached the Chief Controlling Revenue Authority by invoking provisions of Section 32B of the Act, but the appeal was dismissed.

It was submitted at the time of hearing of the petition by the learned counsel for the petitioner that the petitioner was not aware about the order passed by the authorities. It was also submitted that this can be supported by the fact that even before the first authority, the petitioner did not remain present as he was not staying at the place where the notice was sent. A submission was, therefore, made that in the facts and circumstances, the petition may be allowed by directing the authorities to pass an appropriate order afresh in accordance with law.

Mr.Bhagat, on the other hand, supported the order passed by the Appellate Authority, and submitted that the petition may not be entertained.

In the facts and circumstances of the case, in my opinion, ends of justice would be met if the petition is allowed by quashing and setting aside the order passed by the Appellate Authority as well as by the original authority and by directing the original authority to decide the matter again on merits afresh. From the facts and circumstances, it is clear that, prima facie, what the petitioner contends is correct as, ordinarily, if a notice is received by a party, he would appear before the original authority and contend that the stamp fees paid by him was sufficient and it was not contrary to the provisions of the Act or the Rules. The fact that the petitioner did not appear and the order was passed ex parte goes to show that, presumably, he had changed his residence and that he had not received notice. If it is

so, obviously, the said fact would also help him when he approaches the appellate authority.

For the foregoing reasons, in my opinion, the petition deserves to be allowed and is accordingly allowed. The orders passed by the Appellate Authority as well as by the original authority are hereby set aside. The original authority will again pass appropriate order after affording opportunity to the petitioner. It is, however, clarified that I have not entered into merits of the matter and as and when the matter would be heard by the original authority, it is open to him to pass an appropriate order in accordance with law. It is also open to the petitioner to produce any document and / or material in support of his contentions. Since I am setting aside the orders passed by both the authorities and directing the original authority to pass an appropriate order in accordance with law, it is directed that if an order will be passed against the petitioner, the Appellate Authority will entertain appeal, if any, by the petitioner only if the appellant will pay the entire amount without prejudice to his rights and contentions. If any amount is paid, obviously, it will be adjusted. Petition is accordingly allowed to the above extent. Rule is made absolute accordingly. In the facts and circumstances, no order as to costs.

27th April, 2000 (C.K. Thakkar, J.)

*****

(apj)